IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SCOTT WATTLEY,
and others similarly situated,

Plaintiffs,
v.

C.A. No.: 3:15-cv-03349
COLLECTIVE ACTION

HILLCREST, DAVIDSON, & ASSOCIATES, LLC, a Texas limited liability company, KEITH BURKETT, an individual, and, SEAN ATWOOD, an individual, jointly and severally,

Defendants.
___________________________________/

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, SCOTT WATTLEY ("Plaintiff"), and others similarly situated, by and through his undersigned counsel, files this Complaint and Jury Demand against Defendants HILLCREST, DAVIDSON, & ASSOCIATES, LLC, KEITH BURKETT, and SEAN ATWOOD ("Defendants"), and in support thereof states as follows:

INTRODUCTION

1. This is a collective action by Plaintiff, and others similarly situated, against Defendants for unpaid wages pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, *et seq*. Plaintiff seeks damages for unpaid overtime wages, liquidated damages, injunctive relief, declaratory relief, and reasonable attorney fees and costs.

JURISDICTION

2. This claim is properly before this Court pursuant to 28 U.S.C. § 1331, since this claim arises under federal law, and by the private right of action conferred on Plaintiff by 29 U.S.C. § 216(b).

VENUE

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) because Defendants, HILLCREST, DAVIDSON, & ASSOCIATES, LLC, KEITH BURKETT, and SEAN ATWOOD, have a principal business office located in Richardson, Texas.

THE PARTIES

4. Plaintiff SCOTT WATTLEY is an individual residing in the city of Aubrey in Denton County, Texas.

5. Defendant, HILLCREST, DAVIDSON, & ASSOCIATES, LLC, is a limited liability company formed under the laws of the State of Texas that operates a debt collection business in the city of Richardson in Dallas County, Texas.

6. Defendant, HILLCREST, DAVIDSON, & ASSOCIATES, LLC is a debt collector as that term is defined by 15 U.S.C. 1692a(6).

7. Defendant, KEITH BURKETT, is an individual who, on information and belief, resides in Collin County, Texas.

8. Defendant, SEAN ATWOOD, is an individual who, on information and belief, resides in Collin County, Texas.

9. Plaintiff has retained the law firm of Ross Law, P.C., to represent him in this action and has agreed to pay said firm a reasonable attorney's fee for its services. Plaintiff has entered into a valid contract with Ross Law, P.C., and has appointed the undersigned counsel to be his sole agent, attorney-in-fact, and representative in this suit. To avoid tortious interference with Plaintiff's obligations to his attorneys, and to protect against any invalid or coerced waivers of Plaintiff's rights under the Fair Labor Standards Act, all communications concerning this suit, including Plaintiff's right to a jury trial on his Fair Labor Standards Act claims, must be made by

Defendants and Defendants' attorneys solely to and through the undersigned counsel. Plaintiff's contract with an representation by the undersigned attorney gives rise to a claim for reasonable and necessary attorney's fees that Plaintiff is entitled to collect against Defendants pursuant to 29 U. S. C. § 216(b).

DEFENDANTS OWE PLAINTIFF AND SIMILARLY-SITUATED EMPLOYEES UNPAID OVERTIME WAGES

10. Defendants have employed Plaintiff SCOTT WATLEY as a "Collector" at Defendants' Richardson, Texas office from October 15, 2013 to the present.

11. Plaintiff's principle duties include collecting unpaid debts throughout the United States of America by making telephone calls to, and receiving telephone calls from, debtors.

12. Throughout Plaintiff's employment, Plaintiff has worked alongside other employees who performed the same job duties as Plaintiff.

13. For example, Defendants have employed Tedrick Burns, Charles Frye, Dwayne Hamilton, Veronica Stegall, and Miko Humprhey Vasquez as "Collectors" at Defendants' Richardson, Texas office.

14. Like Plaintiff SCOTT WATTLEY, Tedrick Burns, Charles Frye, Dwayne Hamilton, Veronica Stegall, Miko Humphrey Vasquez, and other employees who hold the job title "Collector" perform the principle job duty of collecting unpaid debts throughout the United States of America by making telephone calls to and receiving telephone calls from individual debtors..

15. Plaintiff SCOTT WATTLEY, Tedrick Burns, Charles Frye, Dwayne Hamilton, Veronica Stegall, Miko Humphrey Vasquez, and other similarly-situated employees who hold the job title "Collector" report to the same supervisor, SEAN ATWOOD, and the same manager, KEITH BURKETT.

16. Defendants paid Plaintiff SCOTT WATTLEY, Tedrick Burns, Charles Frye,

Dwayne Hamilton, Veronica Stegall, Miko Humphrey Vasquez, and other similarly-situated employees who hold the job title "Collector" on an hourly basis.

17. Plaintiff SCOTT WATTLEY, Tedrick Burns, Charles Frye, Dwayne Hamilton, Veronica Stegall, Miko Humphrey Vasquez, and other similarly-situated employees who hold the job title "Collector" regularly work, or worked, over 40 hours per week for Defendants.

18. Defendants, however, does not and did not pay Plaintiff SCOTT WATTLEY, Tedrick Burns, Charles Frye, Dwayne Hamilton, Veronica Stegall, Miko Humphrey Vasquez, and other similarly-situated employees who hold the job title "Collector" overtime wages of one-and-a-half times their regular hourly rates for hours worked in excess of 40 hours per week.

19. Plaintiff SCOTT WATTLEY, specifically, has regularly worked an average of 60 hours per week for Defendants.

20. Defendants have paid Plaintiff SCOTT WATTLEY $10.00 per hour for no more than 40 hours of work per week regardless of the number of hours that Plaintiff SCOTT WATTLEY has worked per week.

DEFENDANTS ARE EMPLOYERS COVERED BY THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT

21. Defendant KEITH BURKETT is the President of HILLCREST, DAVIDSON, & ASSOCIATES.

22. Defendant SEAN ATWOOD is the Vice President of HILLCREST, DAVIDSON, & ASSOCIATES.

23. Defendant KEITH BURKETT, at all times relevant to this matter, acted directly or indirectly in the interest of Defendant, HILLCREST, DAVIDSON, & ASSOCIATES, LLC, in relationship the employment of Plaintiff and other similarly-situated employees.

24. Defendant SEAN ATWOOD, at all times relevant to this matter, acted directly or

indirectly in the interest of Defendant, HILLCREST, DAVIDSON, & ASSOCIATES, LLC, in relationship the employment of Plaintiff and other similarly-situated employees.

25. Defendants KEITH BURKETT and SEAN ATWOOD

(a) possessed the power to hire and fire the Plaintiff and others similarly situated;

(b) supervised and controlled the work schedules and conditions of employment for Plaintiff and other similarly-situated employees;

(c) determined the rate and method of payment of Plaintiff and other similarly-situated employees; and

(d) maintained employment records on Plaintiff and other similarly-situated employees.

26. Defendant KEITH BURKETT is, therefore, a statutory and/or joint employer of Plaintiff, and similarly-situated employees, as defined by 29 U.S.C. § 203(d).

27. Defendant SEAN ATWOOD is, therefore, a statutory and/or joint employer of Plaintiff, and similarly-situated employees, as defined by 29 U.S.C. § 203(d).

28. Together, Defendants, HILLCREST, DAVIDSON, & ASSOCIATES, LLC, KEITH BURKETT and SEAN ATWOOD, operate the debt collection business being sued for unpaid overtime wages in this collective action and are collectively an employer as defined by 29 U.S.C. § 203(d).

29. Defendants, HILLCREST, DAVIDSON, & ASSOCIATES, LLC, and KEITH BURKETT, and SEAN ATWOOD, have employees subject to the provisions of 29 U.S.C. § 206 in the office where Plaintiff was, and still is, employed.

30. At all times material to this complaint, Defendants, HILLCREST, DAVIDSON, & ASSOCIATES, LLC, KEITH BURKETT and SEAN ATWOOD, employed two or more

employees and had an annual dollar volume of sales or business of at least $500,000.00.

31. At all times material to this complaint, Defendants, HILLCREST, DAVIDSON, & ASSOCIATES, LLC, KEITH BURKETT, and SEAN ATWOOD, were collectively an enterprise engaged in interstate commerce, operating a business engaged in commerce or in the production of goods for commerce as defined by § 3(r) and 3(s) of the Act, 29 U.S.C. §§ 203(r)-(s).

32. Additionally, at all relevant times, Plaintiff and other similarly-situated employees were individually engaged in commerce and performing work that was directly and vitally related to the functioning of Defendants' business:

(a) Plaintiff, and others similarly situated, regularly utilized the channels of interstate commerce, e.g., telephone and other electronic networks, the U.S. mail, and national banking institutions, to perform their debt collection duties; and

(b) Plaintiff, and others similarly situated, regularly made and received telephone calls and facsimiles originating from and terminating outside of the state of Texas.

VIOLATION OF THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT

33. Plaintiff incorporates the allegations in the above paragraphs of his Complaint.

34. Throughout the employment of Plaintiff and others similarly situated, Defendants repeatedly and willfully violated Sections 7 and 15 of the Fair Labor Standards Act by failing to compensate Plaintiff and others similarly situated at a rate not less than one and one-half times their regular rates of pay for each hour worked in excess of 40 in a workweek.

35. Specifically, Plaintiff and all others similarly situated regularly worked more than 40 hours per week but were not paid a premium rate for their overtime work. Instead, Plaintiff and others similarly-situated were paid a straight hourly rate for no more than 40 hours per workweek, plus any bonuses earned from their collection activities.

36. Pending any modifications necessitated by discovery, Plaintiff preliminarily defines this Class as follows:

ALL CURRENT OR FORMER EMPLOYEES OF HILLCREST, DAVIDSON, & ASSOCIATES, LLC, KEITH BURKETT, and SEAN ATWOOD, WHO WERE EMPLOYED AS COLLECTORS IN RICHARDSON, TEXAS, AND WERE NOT PROPERLY COMPENSATED FOR ALL OVERTIME HOURS WORKED

37. This action is properly brought as a collective action for the following reasons:

a. The Class is so numerous that joinder of all Class Members is impracticable.

b. Numerous questions of law and fact regarding the liability of HILLCREST, DAVIDSON, & ASSOCIATES, LLC, KEITH BURKETT, and SEAN ATWOOD, are common to the Class and predominate over any individual issues which may exist.

c. The claims asserted by Plaintiff are typical of the claims of Class Members and the Class is readily ascertainable from HILLCREST, DAVIDSON, & ASSOCIATES, LLC, KEITH BURKETT and SEAN ATWOOD's own records. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

d. Plaintiff will fairly and adequately protect the interests of Class Members. The interests of Class Members are coincident with, and not antagonistic to, those of Plaintiff. Furthermore, Plaintiff is represented by experienced class action counsel.

e. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members which would establish incompatible standards of conduct for HILLCREST, DAVIDSON, & ASSOCIATES, LLC, KEITH BURKETT and SEAN ATWOOD.

f. The prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interests of the other Class Members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

g. HILLCREST, DAVIDSON, & ASSOCIATES, LLC, KEITH BURKETT, and SEAN ATWOOD, acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

38. For the foregoing reasons, Plaintiff seeks certification of an FLSA "opt-in"

collective action pursuant to 29 U.S.C. §216(b) for all claims asserted by Plaintiff because his claims are nearly identical to those of other Class Members. Plaintiff and Class Members are similarly situated, have substantially similar or identical job requirements and pay provisions, and are subject to Defendants' common practice, policy or plan regarding employee wages and hours.

39. In addition to the named Plaintiff, numerous employees and former employees of Defendants are similarly situated to Plaintiff in that they have been denied overtime compensation while employed by Defendants.

40. Defendants' policy of not paying overtime is company-wide and "Collectors" employed by Defendants during the three years prior to the filing of this action have been deprived of overtime, similar to the Plaintiff.

41. Plaintiff is representative of these other employees and is acting on behalf of their interests as well as Plaintiff's own interests in bringing this action.

42. Defendants either knew about or showed reckless disregard for the matter of whether their conduct was prohibited by the FLSA and failed to act diligently with regard to their obligations as employers under the FLSA.

43. Defendants failed to act reasonably to comply with the FLSA, and so Plaintiff, and all others similarly situated, are entitled to an award of liquidated damages in an equal amount as the amount of unpaid overtime pay pursuant to 29 U.S.C. § 216(b).

44. The acts described in the above paragraphs violate the Fair Labor Standards Act, which prohibits the denial of overtime compensation for hours worked in excess of 40 per workweek.

45. As a result of Defendants' unlawful conduct, Plaintiff, and all others similarly situated, is entitled to actual and compensatory damages, including the amount of overtime which

was not paid that should have been paid.

46. Plaintiff, and all others similarly situated, is entitled to an award of reasonable and necessary attorneys' fees, costs, expert fees, mediator fees and out-of-pocket expenses incurred by bringing this action pursuant to 29 U.S.C. § 216(b) and Rule 54(d) of the Federal Rules of Civil Procedure.

WHEREFORE, Plaintiff, SCOTT WATTLEY, and all others similarly situated, demand Judgment against Defendants, HILLCREST, DAVIDSON, & ASSOCIATES, LLC, KEITH BURKETT, and SEAN ATWOOD, jointly and severally, and request that the Court grant the following relief:

a. Determine that the action is properly maintained as a class and/or collective action, certifying Plaintiff as the class representative, and appoint Plaintiff's counsel as counsel for Class Members;

b. Order prompt notice of this litigation to all potential Class Members;

c. Award Plaintiff and Class Members declaratory and/or injunctive relief as permitted by law or equity;

d. Award Plaintiff and Class Members compensatory damages, liquidated damages, attorneys' fees and litigation expenses as provided by law;

e. Award Plaintiff and Class Members pre-judgment interest as provided by law, should liquidated damages not be awarded;

f. Award Plaintiff and Class Members such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff, SCOTT WATTLEY, on behalf of himself and others similarly situated, demands a jury trial on all issues so triable.

Respectfully submitted this October 16, 2015.

Respectfully submitted,

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